

W. Scott Randolph  
Director – Regulatory Affairs



Verizon Communications  
1300 I Street  
Suite 500E  
Washington, DC 20005

Phone: 202 515-2530  
Fax: 202 336-7922  
srandolph@verizon.com

October 9, 2002

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

**Ex Parte: Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers – CC Docket No. 01-338; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 - CC Docket No. 96-98; Deployment of Wireline Services Offering Advanced Telecommunications Capability – CC Docket No. 98-147**

Dear Ms. Dortch:

On October 8, 2002, Dee May, Ed Shakin, Augie Trinchese, and the undersigned met with Michelle Carey, Tom Navin, Brent Olsen, Rob Tanner, Jeremy Miller, Claudia Pabo, Gina Spade, Jon Reel of the Wireline Competition Bureau and Shanti Gupta and Jerry Stanshine of the Office of Engineering and Technology. The purpose of the meeting was to discuss why CLECs are not impaired without access to unbundled switching and the UNE-P on a national basis. We also discussed how UNE-P for the business market could be eliminated immediately and UNE-P for residence can be transitioned to the resale rate over a reasonable period of time. The attached material was used in the meeting.

Please associate this notification with the record in the proceedings indicated above. If you have any questions regarding this matter, please call me at (202) 515-2530.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Scott Randolph".

W. Scott Randolph

Attachment

cc:	Michelle Carey	Claudia Pabo
	Tom Navin	Gina Spade
	Brent Olsen	Jon Reel
	Rob Tanner	Shanti Gupta
	Jeremy Miller	Jerry Stanshine

# ***UNE Triennial Review***

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## ***Switching and UNE-P***



**October 8, 2003**

## **As Chairman Powell articulated:**

“Only through facilities-based competition can an entity offer true product and pricing differentiation for consumers, ...will corporate spending on equipment thrive,...can a competitor lessen its dependency on an intransigent incumbent,...can an entity bypass the incumbent completely and force the incumbent to innovate,...can our Nation attain greater network redundancies for security purposes and national emergencies.”

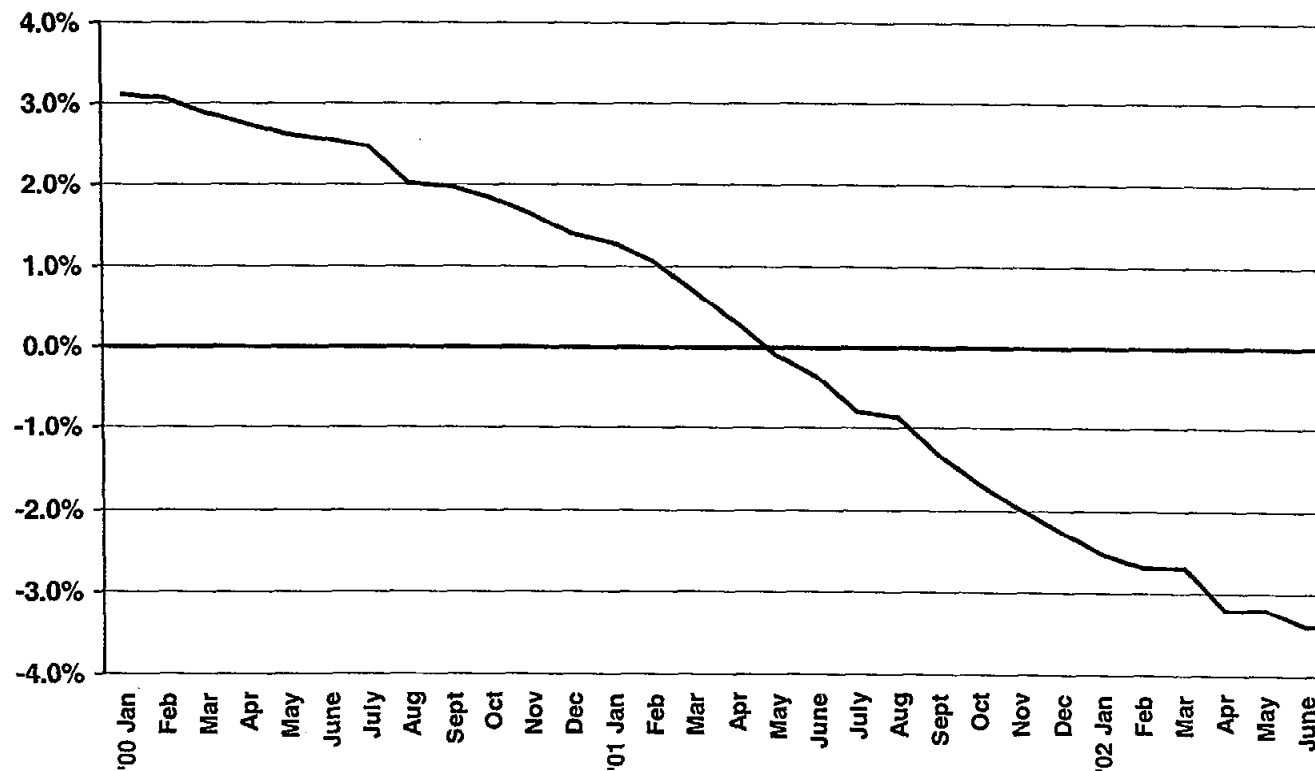
- Chairman Michael Powell, Goldman Sachs  
Communicopia XI Conference, October 2, 2002.

## **A clear lack of impairment nationwide**

- ✓ **CLECs are not impaired without access to unbundled switching and the UNE-P on a national basis in both the residential and business markets.**
- ✓ **Both intra-modal and inter-modal competition is significant, making claims of impairment unsupportable.**

## New realities, new competition

- ✓ As a result of competition and substitution, ILEC access lines have steadily declined, an unprecedented trend in a century of steady annual growth.



*Verizon Access Line Growth*

## **CLEC switches are serving customers**

✓ **At year-end 2001, CLECs operated over 1300 circuit switches and were serving as many as 23M local lines using those switches.**

✓ **The CLEC's reach is nationwide:**

- CLEC circuit switches are so geographically pervasive; they are used to serve customers in wire centers that contain 86 percent of BOC's access lines.
- They are not limited in their ability to expand the service even more.
- In the 100 largest MSAs, CLECs are using their switches to serve customers in wire centers that contain *96 percent* of BOC access lines.

*(UNE Fact Report 2002 at pg. II-1)*

✓ **The is no difference in the ability of a CLEC switch to serve business versus residential customers.**

- Difference may be in retail margin, but that cannot form the basis for impairment.

# Switching equipment is widely available


✓ Switches are so generally available they are offered on eBay.

eBay item 2058499844 (Ends Oct-07-02 07:28:00 PDT) - Nortel DMS-500 Telecom Switch <http://10/http://cgi.ebay.com/ws/eBayISAPI.dll?ViewItem&item=2058499844>


**eBay** [home](#) | [my eBay](#) | [site map](#) | [sign in](#)


[Browse](#) [Sell](#) [Services](#) [Search](#) [Help](#) [Community](#)


[item view](#)

 **Nortel DMS-500 Telecom Switch**  
Item # 2058499844

[Computers & Office Products: Networking & Telecom: Routers, Switches: Nortel, Bay Networks](#)


 **Currently** **US \$350,000.00** **First bid** **US \$350,000.00**

 **Buy It Now for US \$400,000.00**  
This option disappears once a bid is placed.

 **Quantity** **1** **# of bids** **0 bid history**

**Time left** **5 days, 17 hours +** **Location** **Music City, TN**

**Country/Region** **United States /Nashville**

 **Started** **Sep-30-02 07:28:00 PDT** [Email this auction to a friend](#)

**Ends** **Oct-07-02 07:28:00 PDT** [watch this item](#)

**Seller (Rating)** **[willhagan\(197\)](#) ★ ★ ★ Power Seller**  
[view comments in seller's Feedback Profile](#) | [view seller's other items](#) | [ask seller a question](#)

**High bid** **--**

**Payment** **Money Order/Cashiers Checks. See item description for payment methods accepted**

**Shipping** **Buyer pays for all shipping costs. Will ship to United States and the following regions: Europe, Canada.**

**Seller Services** [Revise item](#) | [Sell similar item](#)

## **The threat from cable is significant**

- ✓ Cable telephony is growing at a rate of 100% annually and in some local markets is taking up to 40% of the market.
- ✓ In several Verizon states, cable telephony has achieved sizeable market share:
  - MA: 16%
  - PA: 19%
  - VA: 11%
  - RI: 10%
  - *(percent of lines, statewide)*

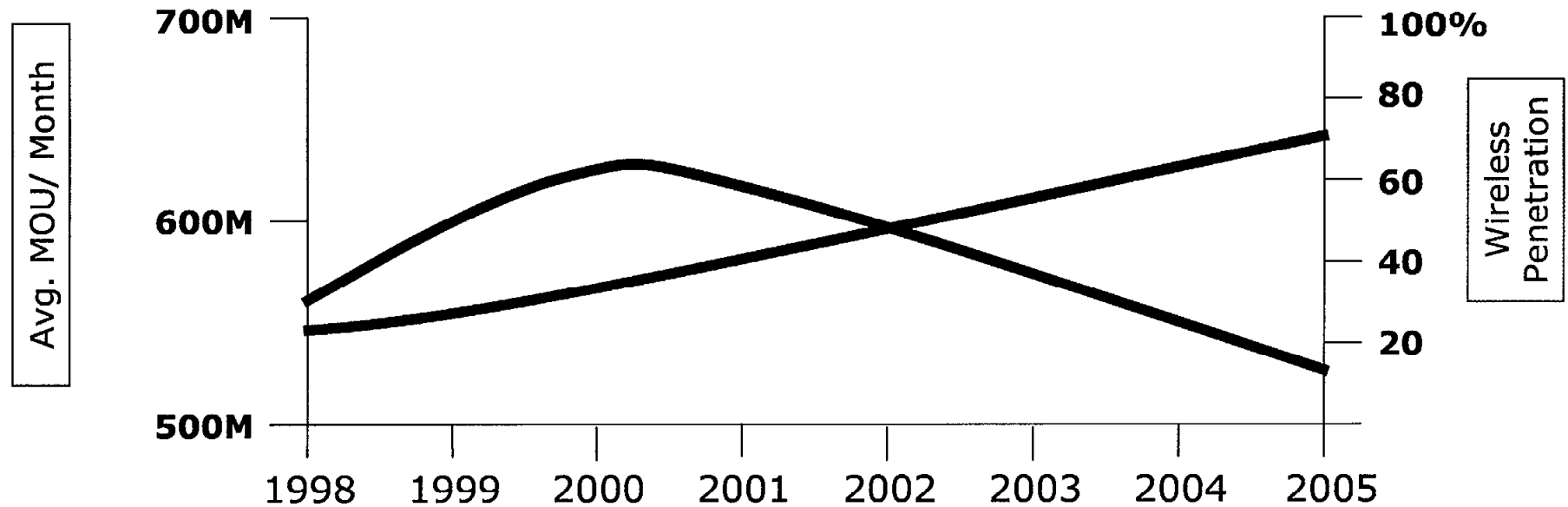


# **Wireless also offers stiff competition**

- ✓ **Almost one in five cell phone owners consider their cell phones their primary phone. (*USA Today, CNN, Gallup*)**
- ✓ **Leap Wireless International, recently announced that more than 26 percent of its Cricket customers say they do not have a traditional phone at home. And, more than 80 percent of Cricket customers use the service as their primary phone.**
- ✓ **10 million access lines displaced by wireless to date, 10 million more to be displaced by 2005 (*IDC*)**
- ✓ **“Billed rate” for landline service (LD, local, vertical services) is \$55 today – comparable wireless service is only \$39 (*Strategis Group*)**
- ✓ **Already 40% of wireless users use cell phones for long distance at home (*NMRC*)**
- ✓ **By 2006, more than 5 million homes will use mobile and high-speed Internet access as their primary connection (*Forrester*)**
- ✓ **By 2006, telecom carriers will lose \$8.8 billion in revenues to wireless and broadband services (*Forrester*)**

# And as consumers go wireless...

...wireline minutes decline.

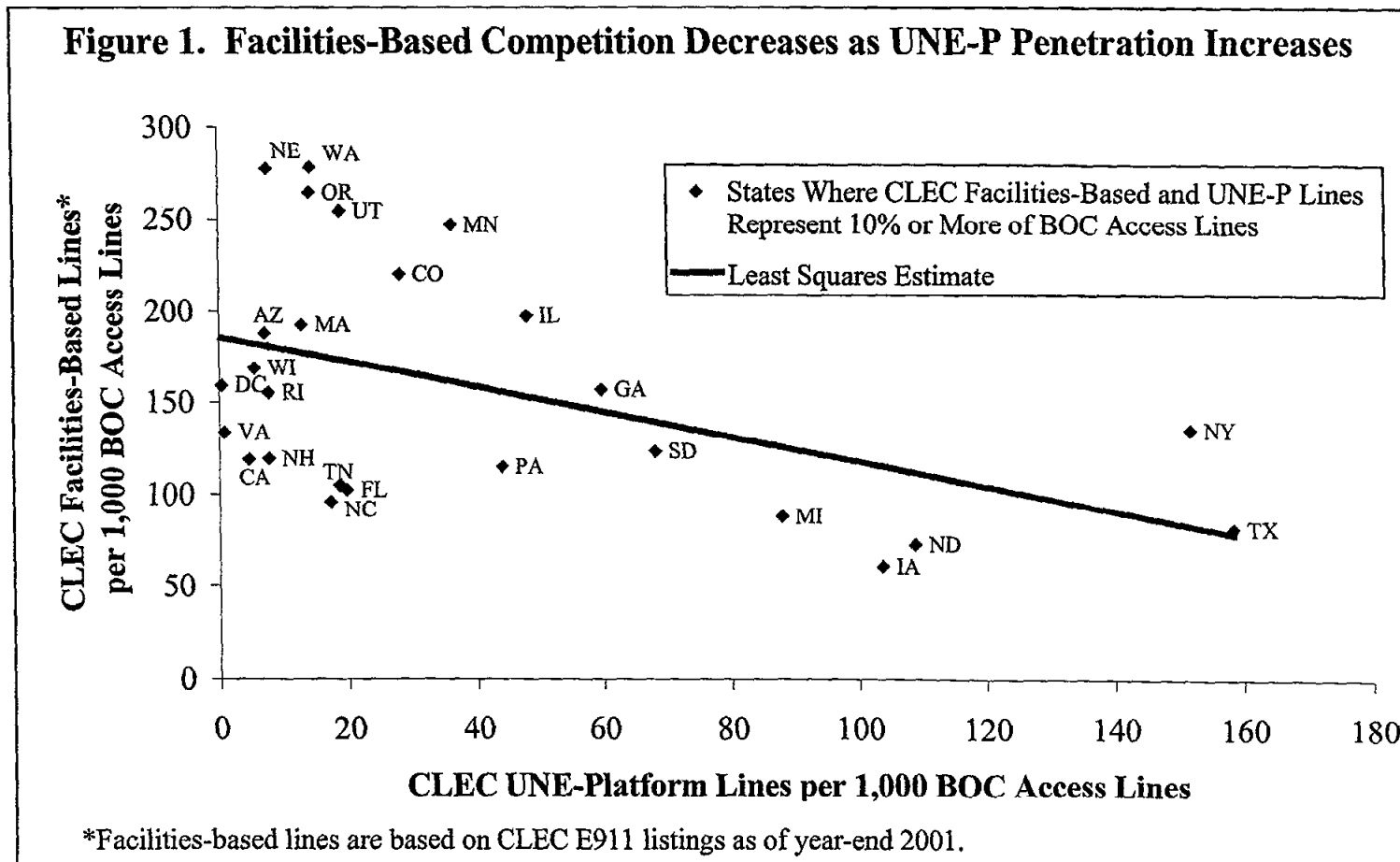


***The Retail InterLATA Voice Minute Volume***

*Source: Bernstein Research Call, "Domestic Telecom," March 2001*

# The UNE-P deters facilities based competition

- ✓ Recent data confirms that as use of UNE-P increases, CLEC investment decreases.



## **UNE-P undermines ILEC financial position**

- ✓ “The relative meager cost savings associated with the shift in access line mix to more wholesale lines exacerbates the revenue decline impact on EBITDA margins. While Bells lose 60% of revenues when they lose a line to a UNE-P competitor, we estimate that they retain 95% of costs (Marc Crossman – JP Morgan, July 12, 2002)
- ✓ “ To create UNEP prices that may be attractive to the CLECs, regulators are forcing the RBOCs to wholesale their network at rates that are significantly below the costs that the financial community looks at.” (Anna Maria Kovacs - Commerce Capital Markets, May 1, 2002)
- ✓ UNE-P lines generate negative EBITDA in 18 states for the Bells ( 60% of US residential lines, UBS Warburg)
- ✓ Analyst report on the telecom industry pointed out that RBOC UNE-P sales “... generate negative free cash flow in 47 [out of 48] of their states. (Merrill Lynch, 9/14/02)

# **New entrants and suppliers are hurt**

## **✓ Growth in UNE-P lines has also led to the downgrade of one of the largest local service competitors:**

- “As more competitors utilize UNE-P to compete for the same subscribers, existing facilities-based competitors, like Cox Communications, are hurt as subscriber growth declines and ILECs like SBC respond with lowered local rates.” (Credit Suisse/ First Boston, 9/17/02)

## **✓ UNE-P policies also undermine manufacturers’ ability to develop new products:**

- “Telecom service providers will not invest in infrastructure when regulatory burdens adversely affect the viability of business cases and shareholder return on investment.”
- “Without such investment, the equipment suppliers and solutions providers that create innovation will be unable to sustain their research-and-development efforts.”

*“New Realities in Telecommunications and the Need for Sound Public Policies” Nortel Networks, September 24, 2002.*

# UNE-P is economically unsustainable

✓ “Fraudulent competition and below market pricing:

- “UNE-P isn’t competition as the market defines it. UNE-P is regulators setting wholesale prices low enough to guarantee profitable resale. However, at TELRIC pricing in a highly inelastic local market, no one (incumbent or competitor) can compete in the long term as a full service infrastructure provider. This is because TELRIC pricing devalues existing infrastructure by setting a price (based on marginal costs) that will never *realistically* recover the costs of replicating current infrastructure.”

*“Why UNE-P Is Going Away: Telecom Competition’s Changing Trajectory”, Scott Cleland, Precursor Group, October 2, 2002.*

## Recent UNE-P trends

- ✓ CLECs who previously relied on their own facilities to serve business customers are now turning to UNE-P.
  - In Verizon region, average monthly increase for business UNE-P in 2002 has almost doubled from monthly average increase in 2001 (from approximately 16K to 31K).
- ✓ Recent increases in overall UNE-P usage in Verizon's territory is equally attributable to business lines as it is residential.

## **Recent UNE-P trends**

- ✓ **For residential customers, most carriers are not transitioning from UNE-P to UNE-L, but in fact are moving more aggressively into UNE-P.**
- ✓ **In New York, AT&T and WorldCom together provide UNE-P to over 1M residential customers and operate 28 local circuit switches.**
  - **Yet, AT&T and WorldCom have converted little or no UNE-P to UNE-L.**
- ✓ **In Verizon's region, carriers have begun to convert UNE-L lines to UNE-P.**



## **A roadmap to facilities-based competition**

- ✓ There is a sufficient record to find that carriers are not impaired without access to ILEC switching on a national basis.
- ✓ UNE-P for the business market can be eliminated immediately.
  - No significant backlog of embedded base to convert.
  - Until recently, CLECs have not relied on UNE-P to serve businesses.

## **A roadmap to facilities-based competition**

- ✓ **FCC has sufficient authority to implement a transition plan to address practical concerns with discontinuing residential UNE-P.**
- ✓ **UNE-P for the residential market can be transitioned to the resale rate over a reasonable period of time.**
  - Some customers will be moved to facilities-based alternatives, some remain on ILEC network via resale, some lost to new entrants such as cable.
  - For embedded base, the hot cut process on a project-managed basis can be used to move existing UNE-P customers to UNE-L or other telecom entry modes.
- ✓ **Going-forward, Verizon can handle expected volumes of UNE-L orders.**

# **A roadmap to facilities-based competition**

- ✓ **Whether through rulemaking or forbearance, the Commission should rule that section 271 obligations do not require unbundling where the Commission has found that carriers are not impaired under section 251(d)(2).**
  - When competing carriers are not impaired, it is anti-competitive and inconsistent with the Act to require unbundling.
  - It makes no sense to impose unique and inconsistent unbundling obligations on a subset of incumbent carriers.

## **A uniform national policy is needed**

- ✓ A uniform national policy is necessary to create incentives for investment and promotion of truly competitive markets.
- ✓ Sec.251(d) appoints the FCC as the regulatory body that must make the determination of a limiting standard to determine what elements should be unbundled.
  - Under the Act, the FCC must make clear that further state unbundling is not “consistent with the requirements” of that section.